

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

Johnny Lee Davis, #293752,)	
)	
Plaintiff,)	C/A No. 2:08-1052-MBS
)	
v.)	
)	
)	ORDER AND
Ofc. Hunter; John Clark;)	OPINION
Ofc. Farmer; Ofc. Major James;)	
Ofc. Richardson; Cpt. Thomas;)	
Cpt. Thomas;)	
)	
Defendants.)	
_____)	

This is an action brought by Johnny Lee Davis (“Plaintiff”) against seven employees of the Lee County Correctional Institution (“Defendants”) pursuant to 42 U.S.C. § 1983. Plaintiff claims that Defendants violated his First and Eighth Amendment rights by denying him access to the chapel during controlled movements. (Compl. at 3).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Robert S. Carr for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of the Prison Litigation Reform Act and filed a Report and Recommendation on April 17, 2008. The Report and Recommendation reflects that on the court-issued Special Interrogatories, Plaintiff indicates that he did not file a formal grievance with respect to the issues raised in the complaint. (Entry 11). The Magistrate Judge recommended the petition be dismissed because Plaintiff failed to exhaust the available administrative remedies. *See* 42 U.S.C. § 1997(e).

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. Id. The district court need not conduct a *de novo* review when a party makes only general and conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

Plaintiff filed an objection to the Report and Recommendation on April 30, 2008, in which he continued to assert the merits of his complaint. Petitioner failed, however, to direct the court's attention to a specific error in the Magistrate Judge's findings and recommendation. Nevertheless, the court has conducted a *de novo* review of the petition and concludes that the Magistrate Judge has properly applied the applicable law.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). The district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's report to which objections have been filed. Id. The district court need not conduct a *de novo* review when a party makes only general and

conclusory objections that do not direct the court to a specific error in the Magistrate Judge's proposed findings and recommendations. Orpiano v. Johnson, 687 F.2d 44, 47-48 (4th Cir. 1982).

The court adopts the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. The complaint is dismissed *without prejudice* as an unexhausted § 1983 claim. Respondent is not required to file a return.

IT IS SO ORDERED.

s/Margaret B. Seymour
Margaret B. Seymour
United States District Judge

December 3, 2008
Columbia, South Carolina

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.